

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA

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In Re: ) Case No. 19-30088  
 ) Chapter 11  
PG&E AND PACIFIC GAS AND )  
ELECTRIC COMPANY ) San Francisco, California  
 ) Wednesday, April 13, 2022  
Debtors. ) 10:00 AM  
 )  
 ) STATUS CONFERENCE RE THE  
 ) COURT'S DOCKET TEXT ORDER  
 ) (DKT 11999) (DKT 12001) (DKT  
 ) 12000) (DKT 12076) (DKT  
 ) 12129)

TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE DENNIS MONTALI  
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES (All present by video or telephone):  
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1 SAN FRANCISCO, CALIFORNIA, WEDNESDAY, APRIL 13, 2022, 10:00 AM

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3 (Call to order of the Court.)

4 THE CLERK: Court is now in session, the Honorable  
5 Dennis Montali presiding.

6 Calling the matter of PG&E corporation. I'm bringing  
7 counsel in now, Your Honor.

8 THE COURT: All right. I see Mr. Pascuzzi in the  
9 audience. Okay. Okay. Good morning.

10 Ms. Kim and Mr. Pascuzzi, why don't you state your  
11 appearances, please?

12 MS. KIM: Good morning, Your Honor. Jane Kim, Keller  
13 Benvenuti Kim, on behalf of the reorganized debtors.

14 MR. PASCUZZI: Good morning, Your Honor. Paul  
15 Pascuzzi on behalf of the Department of Water Resources. And  
16 on the screen also is our cocounsel from the Attorney General's  
17 Office. So she should make her appearance as well.

18 THE COURT: Yes. Ms. Almendras? Is that --

19 MS. ALMENDRAS: Yes. Good morning, Your Honor.  
20 Annadel Almendras with the Attorney General's Office appearing  
21 on the -- on behalf of the California Department of Water  
22 Resources.

23 THE COURT: Well, Mr. Pascuzzi, what's your pleasure,  
24 given where we are?

25 MR. PASCUZZI: Well, I'd like the Court to confirm its

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1 tentative ruling as the final ruling in the matter. There was  
2 one comment at the end about the transmission services  
3 agreement and the dispute between the Department of Water  
4 Resources and NCPA and Silicon Valley Power.

5 It's our position that there's not an avenue for  
6 arbitration under that agreement. And I just wanted to make  
7 sure the Court wasn't making any rulings on that. It didn't  
8 look like it. But other than that, we would accept the court's  
9 tentative.

10 THE COURT: Well, when you say not an avenue for it, I  
11 believe that it was clear from the prior argument that the  
12 dispute between -- under the transmission agreement would be  
13 dealt with elsewhere, which is what I said. So you're not  
14 asking and I'm not making any ruling at all on that. But it  
15 wasn't clear to me as to whether -- what was needed to be  
16 enjoined. Let's see what Ms. Kim has to say from the debtor's  
17 point of view.

18 MS. KIM: So, Your Honor, just I'd like to level set  
19 because, as Your Honor pointed out in the Sunday docket text  
20 order, things have moved fast over the past few weeks. So I  
21 thought it would be helpful just to give a little chronology  
22 of -- and hopefully that'll help to explain how we ended up  
23 getting here and why PG&E ended up doing what it did.

24 THE COURT: You don't have to. I mean, I'll be happy  
25 to let you say it. I'm not mad at you. I just want to -- I

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1 have to figure out a way to conclude this matter. So go ahead  
2 if you want to make the statement, but it's not something I  
3 require.

4 MS. KIM: Yes. If Your Honor would just indulge me.

5 So let's go back to May 15, 2020, which is when the  
6 California state agencies filed their objections to the  
7 schedules of executory contracts at docket number 7276. That's  
8 the document that DWR claims placed this matter before the  
9 Court. And that's the basis of the Court's retention of  
10 jurisdiction in its order denying PG&E's arbitration motion.

11 That objection asked that before the agencies had to  
12 make any cure objection, the Court make a finding as to the  
13 executoriness of any executory contract. And what the  
14 objection stated was that it was objecting to the schedules on  
15 the ground that there had been inadequate notice and time to  
16 respond and that the descriptions of the purported contracts  
17 and leases on the cure notice are not sufficient for a contract  
18 counterparty to determine whether the item is an executory  
19 contract or unexpired lease. I'm reading from the objection.

20 The confirmation order, for the record it's docket  
21 8053, didn't end up using the state agency's language or  
22 proposed procedures. Instead, what paragraph 67D of that order  
23 says is that after the confirmation order is entered, if any  
24 governmental entity has a dispute as to the executoriness of  
25 any contract or the cure amount, it would have ninety days

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1 after the confirmation date to file and serve an objection  
2 setting forth such dispute.

3 And there was oral argument which Your Honor and Mr.  
4 Pascuzzi were there. I was watching, but I wasn't arguing --  
5 but about this very language. And Mr. Pascuzzi took the  
6 position that the state agencies had already filed their cure  
7 objection. And Mr. Karotkin for the debtors took the position  
8 that PG&E wasn't saying that they had or hadn't, but that we  
9 get to argue later that they didn't preserve their objection if  
10 they hadn't filed it within ninety days of the confirmation  
11 order. And Your Honor simply said, Well, Mr. Pascuzzi knows  
12 whether he already filed an objection or not. And if he did,  
13 then he doesn't need to file another one.

14 So going back to docket number 7276, which it was that  
15 objection, that didn't state DWR's objection to the executory  
16 nature of the co-tenancy agreement or to the assumption of the  
17 co-tenancy agreement or to the asserted cure amount. Instead,  
18 it objected to the assumption schedules on the basis that the  
19 agencies needed more time and the schedules were inadequate.  
20 And they were given more time. They were given ninety days  
21 after the confirmation date. That, we would posit, did not put  
22 this issue before the Court, and no further objection was filed  
23 by or on behalf of DWR are within those ninety days.

24 So on October 4th and November 4th, 2020, PG&E and DWR  
25 and NCPA and SVP engaged in mediation sessions. And that's

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1 important because all of the issues among all of the parties  
2 under both the co-tenancy agreement and the transmission  
3 service agreements were mediated together. Of course, those  
4 mediation sessions were not successful and didn't result in --

5 THE COURT: Nor were they public.

6 MS. KIM: Nor were they public.

7 THE COURT: Okay.

8 MS. KIM: February 1, 2022, that's what gets us to the  
9 to this dispute. DWR filed its motion for an order determining  
10 that the Castle Rock agreement with PG&E cannot be assumed and  
11 that the Department of Water Resources claim number 78104 be  
12 paid. That's docket number 11887.

13 I think it's important to see what the motion  
14 requested. The motion requested an order determining that, 1,  
15 DWR's was co-tenant interest in the Castle Rock agreement  
16 terminated on its own terms; 2, the terms of the Castle Rock  
17 agreement did not require that DWR pay for any future estimated  
18 costs of removing the transmission line before its termination  
19 from the agreement could become effective; 3, that the Castle  
20 Rock agreement was not an executory contract that could have  
21 been assumed; 4, that their proof of claim in the principal  
22 amount of \$101,026.75 should be paid with post-petition  
23 interest under the plan; 5, that the arbitration provisions  
24 didn't preclude this Court from determining whether DWR's proof  
25 of claim should be paid; and 6, for such other and further

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1 relief as the Court deems just. That's from both the preamble  
2 to the motion as well as the request for relief, prayer for  
3 relief at the end of the motion.

4 Tellingly, what the motion did not request was a  
5 finding that after DWR are terminated its petition  
6 participation in the co-tenancy agreement, it would never be  
7 liable for removal costs. And it couldn't have because that  
8 type of declaratory relief based on a contract requires the  
9 filing of an adversary proceeding under rules -- bankruptcy  
10 procedure 7001(1) and (9). That's a jurisdictional  
11 requirement. And Rule 3007(b) expressly bars parties from  
12 bringing such relief in the context of a claim objection, by  
13 the way, claim objection that hasn't yet been filed, outside of  
14 an adversary proceeding. And I'll --

15 THE COURT: You said the requirement of an adversary  
16 proceeding is jurisdictional. Isn't it waivable?

17 MS. KIM: So, well, we -- it could be waivable except  
18 that -- well, let me -- let me just --

19 THE COURT: Well, I just wanted to ask you -- and I  
20 don't recall your demanding an adversary proceeding on this  
21 issue.

22 MS. KIM: And I'll explain why in a moment.

23 THE COURT: Okay. You just said it was  
24 jurisdictional, and I don't think it is. And I believe it is  
25 waivable. But if you think it's jurisdictional, then I guess



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1 we disagree. Does it matter?

2 MS. KIM: I'm not sure that the jurisdictional aspect  
3 of it matters because -- let me get to the next -- to what we  
4 filed.

5 So PG&E filed on February 2nd its motion for entry of  
6 an order modifying plan injunction and compelling arbitration  
7 of the claim of California Department of Water Resources.  
8 That's docket number 11896. That motion was not a claim  
9 objection and did not assert a counterclaim. Instead, it was a  
10 motion stating that the issues that were raised in DWR's motion  
11 were part of a larger dispute involving multiple parties and  
12 another agreement and that therefore it should be dealt with in  
13 arbitration.

14 And PG&E's motion makes this clear. On pages 17 and  
15 18 of that motion, it says the reorganized debtors have not yet  
16 objected to CDWR's proof of claim. Moreover, an objection to  
17 CDWR's proof of claim would be insufficient to resolve the  
18 dispute with CDWR. In addition to CDWR's affirmative claim set  
19 forth in its previous claim, the parties would need to file a  
20 separate adversary proceeding or other motion to assert PG&E's  
21 and the other co-tenant's defenses and counterclaims regarding  
22 CDWR's obligation to pay removal costs.

23 So that takes us to March 8th, when the Court issued  
24 its memorandum decision at docket 11999. That decision  
25 retained jurisdiction over the dispute set forth in CDWR's

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1 motion and require PG&E to file a substantive brief by March  
2 25th.

3 Now, there was an exchange of emails on March 10th and  
4 11th, 2022, which were attached as Exhibit 8 to Ms. Valdez's  
5 declaration that was filed in those reply brief that DWR filed  
6 on this past Friday, where -- upon request of PG&E's counsel,  
7 my request, DWR's counsel agreed that PG&E's brief may be  
8 deemed a claim objection for purposes of the claim objection  
9 deadline, which was March 23rd.

10 Now, Your Honor may recall that's the same treatment  
11 that the Court has authorized with respect to claims that are  
12 being litigated in other courts where the stay is lifted or the  
13 plan injunction modified. So it's not a finding that there's a  
14 warrant or a concession that there's been a claim objection.  
15 But in the Court's order extending for the second time the  
16 claim objection, the deadline for the reorganized debtors to  
17 object to claims at docket 10494, there was a deemed objection  
18 filing just for purposes of meeting the claim objection  
19 deadline. And that's what happened through that email exchange  
20 on March 10th and 11th. March 17th --

21 THE COURT: But you don't have any independent  
22 objection to their proof of claim, right?

23 MS. KIM: We have not filed anything in --

24 THE COURT: No, no, not that you didn't file one. You  
25 don't have one.

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1 MS. KIM: We --

2 THE COURT: Do have any substantive objection to that  
3 101,000-dollar claim?

4 MS. KIM: Not that we -- not that we are raising, no.

5 THE COURT: Right. So therefore, to say that you  
6 should -- you might have -- you didn't object to the claim.  
7 You have no basis to object to the claim.

8 MS. KIM: We are not objecting to the claim.

9 THE COURT: You have no basis to object to the claim.

10 MS. KIM: I don't know that we wouldn't -- I don't  
11 mean to be --

12 THE COURT: And now you've paid it.

13 MS. KIM: I don't mean to be -- I don't meant to be  
14 difficult.

15 THE COURT: And you've --

16 MS. KIM: We have not --

17 THE COURT: And you've paid it.

18 MS. KIM: -- made -- we have we have not stated any  
19 kind of -- anything that we would -- any objection that we  
20 would have had to the claim, to that claim.

21 March 17, 2022 SVP and NCPA sought to intervene and  
22 file a substantive brief as well seeing that the judge -- that  
23 Your Honor was going to retain jurisdiction over the  
24 substantive merits. That was docket 12035. And then the Court  
25 denied, of course, that motion to intervene on March 21st,

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docket 12054.

That took us to March 30th. I'm skipping March 25th in our brief look just to get to March 30th, which was the last date under section 13.1 of the co-tenancy agreement to commence arbitration. Otherwise, the dispute in co-tenant under the co-tenancy agreement, what it says is it shall be deemed to have waived all claims with respect to such billing dispute.

The other co-tenants asked DWR to consent to extend the arbitration deadline because we were concerned about the confusion that has ended up resulting here. And DWR declined to do so and offered no other alternative. And that's actually in an email exchange, a couple of email exchanges, attached to Ms. Valdez's declaration.

So because PG&E believed that it was important for all the parties to be part of the same litigation and for the parties' disputes under both the code tenancy agreement and the transmission service agreement to be resolved together because those agreements are interrelated and the purpose of those agreements was to provide for sharing of costs and obligations among all of the parties, we looked at what was actually at issue in the two motions before the Court. Neither DWR's motion nor PG&E's motion put DWR's ultimate obligation to reimburse the future removal costs, regardless of whether DWR terminated its participation in the co-tenancy agreement in front of the Court.

PG&E and Pacific Gas And Electric Company

1 DWR asked for a finding in its motion that the  
2 agreement did not require payment of the removal costs before  
3 the termination could be effective. And PG&E stated that DWR,  
4 it had -- regardless of the termination, DWR has an obligation.  
5 But PG&E didn't file that claim against DWR and instead asked  
6 for it to be arbitrated. And PG&E's motion and its papers were  
7 neither a claim objection nor a counterclaim nor an adversary  
8 proceeding bringing the claim. So in terms of --

9 THE COURT: Okay. Therefore what?

10 MS. KIM: So --

11 THE COURT: That still doesn't explain how you would  
12 decide that there is no more core matter and not file an issue  
13 and address the merits. It's clear that the Department made  
14 its position clear that it believed that this Court, not the  
15 arbitrator, could decide the fundamental question of whether  
16 there is any liability at all. And I left open, if I determine  
17 there is liability, maybe I should then send it to arbitration.  
18 I didn't decide one way or the other. But you didn't file a  
19 brief to say, you know what, as a matter of law, we had --  
20 there were damages. So you in effect, in my -- you simply  
21 waived it.

22 MS. KIM: Well, but in terms of what the Court had in  
23 front of it at the time was it had the issue of executoriness.  
24 That's what was -- it had the issue --

25 THE COURT: Ms. Kim, let me get to the point. What do

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1 you think I should do?

2 MS. KIM: So --

3 THE COURT: I made this -- and by the way, I made this  
4 a tentative ruling because I don't want to be precipitous. I  
5 don't want to just pretend that I know what either side wants  
6 to do. And I moved it quickly because of this threat of the  
7 arbitration and what's going on in the -- before the  
8 arbitrators. So I asked the Department what does it want. it  
9 wants me to memorialize my ruling as a matter of law. What do  
10 you want me to do?

11 MS. KIM: So my -- our ask is a finding that the  
12 requests made in DWR's motion have been resolved and  
13 effectively mooted and that the issue of whether  
14 post-termination DWR will be liable for removal costs was not  
15 raised in DWR's motion, it hasn't been placed before the Court,  
16 and that the parties may arbitrate it in the pending  
17 arbitration because --

18 THE COURT: In other words -- in other words, why  
19 don't I just reverse my decision that I made that you didn't  
20 even appeal and say, you know what, I guess I was right, I  
21 shouldn't have done it, and the arbitrator should have decided.  
22 I'm sorry. I'm not going there.

23 MS. KIM: Well, so let me -- there is -- I have an  
24 alternative ask, which is --

25 THE COURT: Okay.

PG&E and Pacific Gas And Electric Company

1 MS. KIM: So let me just -- let me explain why this  
2 dispute was not before the Bankruptcy Court.

3 THE COURT: Well, let me ask again. You and your  
4 colleagues do such thorough work on every subject in the world,  
5 and it's a pleasure to have you do that for me. And this time  
6 you surprise me because I thought, at the minimum, I'd get a  
7 brief on why Mr. Pascuzzi is full of hot air and this matter  
8 there were damages. But I didn't. Instead, I went back, as  
9 you know. When I read the briefs, and you filed your brief  
10 about why I should send this matter to arbitration, you said in  
11 the alternative, let's have a status report. So you got a  
12 status opportunity and you got an opportunity to brief the  
13 merits, and you didn't. So that's what's intriguing and  
14 confusing to me.

15 MS. KIM: Well, what we looked at was, well -- so what  
16 DWR's motion did was it began a contested proceeding with  
17 respect to the executoriness assumption issue and the claim  
18 objection, that which is governed by Rule 9014.

19 THE COURT: No, I understand. I understand.

20 MS. KIM: Well --

21 THE COURT: I understand your theory about it. But  
22 what your -- your alternative ask is what. What do you want me  
23 to do?

24 MS. KIM: So just because Rule 9014 doesn't  
25 incorporate all of the rules -- all of the rules of --

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1 involving an adversary proceeding, involving -- that would  
2 allow for all the procedural -- for the procedural process to  
3 sue, enjoin parties, and properly frame the issues before the  
4 Court in the context of an adversary proceeding, so our  
5 alternative ask would be that, to the extent that the Court  
6 is -- believes that those post-petition removal costs issue  
7 should remain before it, for our opportunity to file an  
8 adversary proceeding to ensure that this is done properly and  
9 that there's an opportunity for the necessary parties and the  
10 issues to be heard together.

11 THE COURT: Well, the problem is, if I could -- I  
12 thought about having Mr. Pascuzzi file a motion for summary  
13 judgment, which I believe can be done in the context of a claim  
14 objection, particularly when the company -- when your side  
15 never asked for an adversary proceeding until this morning.  
16 But if I let him file a motion for summary judgment, I don't  
17 know whether I'd let you oppose it because --

18 MS. KIM: But --

19 THE COURT: -- essentially it's like entering a  
20 default. In my view, you didn't respond when you were invited  
21 to, and that's the equivalent of taking someone's default. And  
22 as a matter of proof-up, I could say to Mr. Pascuzzi, well, you  
23 got to show me why you think you win on the merits, but I don't  
24 know that that PG&E should oppose that motion because they  
25 didn't oppose it when they were invited to.



PG&E and Pacific Gas And Electric Company

1 MS. KIM: So, Your Honor, I remember a number of  
2 times, including early on in the case, when Your Honor went in  
3 I think on PG&E for a few times for asking in its order for  
4 more relief than it had sought in its motion. And I think  
5 this -- that's what we have here, is the motion did not ask for  
6 the kind of declaratory relief that that type of a summary  
7 judgment motion or a default order would -- that Your Honor is  
8 suggesting would be granting. There is no declaratory relief  
9 on the table right now with respect to what happens, regardless  
10 of DWR's termination, to the obligation to pay removal costs.

11 THE COURT: Okay.

12 MS. KIM: It hasn't been raised. So now if Your Honor  
13 is going to -- regardless of all of that, if Your Honor remains  
14 inclined to make final the tentative, then I do -- I've  
15 prepared to discuss the merits of that claim. But frankly, I  
16 just don't see that claim before the Court yet.

17 THE COURT: Okay. Mr. Pascuzzi, if Ms. Kim is right,  
18 maybe I went too far. Is she right?

19 MR. PASCUZZI: Your Honor, you didn't go too far. I  
20 mean, that's a hyper-technical, revisionist history of what is  
21 before the Court. I don't see how you can look at our motion  
22 and their motion and not say that the issue of DWR's liability,  
23 which PG&E raised, for the removal costs was not before the  
24 Court.

25 And yes, it was all tied up in the executory contract

PG&E and Pacific Gas And Electric Company

1 issues that were reserved under the plan and the confirmation  
2 order for this Court and specifically this Court. So they  
3 waived, as the Court already found. PG&E already briefed. The  
4 Court already found a waived the right to arbitrate those  
5 issues.

6 Then they've had two opportunities in writing to brief  
7 everything that Ms. Kim just said, one opportunity orally the  
8 last hearing that we had as well. None of this was raised.  
9 And the issue was clearly before the Court as to DWR's  
10 liability.

11 Now it was framed by PG&E in its papers as tied to the  
12 termination of the contract. But DWR's motion merely took what  
13 PG&E's issue as framed and put it before the Court. And it's  
14 not just whether, as part of termination, DWR is liable for the  
15 removal costs. I mean, think of -- we're going to do this all  
16 over again. You've already got both contracts before the  
17 Court. You've looked at everything. There were no material  
18 facts in dispute. It's just --

19 THE COURT: Now, wait a minute. Hold on. Slow down.  
20 I mean, the transmission agreement is technically before the  
21 Court, but I haven't paid any attention to it.

22 MR. PASCUZZI: Yeah. And it's irrelevant to it.

23 THE COURT: Okay. So there's only one --

24 MR. PASCUZZI: We addressed it in our original motion.

25 THE COURT: It's only the co-tenancy agreement.

PG&E and Pacific Gas And Electric Company

1 There's only --

2 MR. PASCUZZI: Correct.

3 THE COURT: Oh, you said two contracts. I have two  
4 motions.

5 MR. PASCUZZI: Well, they've both been mentioned --

6 THE COURT: Yes.

7 MR. PASCUZZI: -- in the pleadings. And I don't  
8 recall if we put the transmission services agreement in the  
9 record, but co-tenants --

10 THE COURT: It's on the record somewhere. I saw it,  
11 but I didn't --

12 MR. PASCUZZI: Yeah.

13 THE COURT: -- bother reading it, frankly.

14 MR. PASCUZZI: It's been our position that it is  
15 irrelevant. And as the Court properly found, those are issues  
16 between the parties to that agreement, which are DWR and CPA  
17 and Silicon Valley Power.

18 THE COURT: But you're not, by the way, going back to  
19 your prior request for an injunction. You're not asking me to  
20 enjoin PG&E from trying to be heard on the transmission  
21 agreement, are you?

22 MR. PASCUZZI: No, Your Honor. Because PG&E was  
23 trying to -- it joined in the arbitration proceeding. And on  
24 the issue that the Court was -- it was pending before the  
25 Court, we mentioned that now -- after we filed our brief on

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1 Friday, AAA, the arbitration company, sent us an email, this  
2 was late Friday afternoon, saying we've reviewed the  
3 submissions of the parties and your memorandum decision, and  
4 we've decided we can go forward with the arbitration only as to  
5 NCPA and SVP.

6 THE COURT: Oh, okay.

7 MR. PASCUZZI: Not PG&E. So if the Court affirms --

8 THE COURT: Excuse me. But let me -- and let me  
9 interrupt. As to as to the transmission agreement?

10 MR. PASCUZZI: As to the --

11 THE COURT: But AAA isn't saying they can deal with  
12 the co-tenancy agreement, are they?

13 MR. PASCUZZI: Correct.

14 THE COURT: Okay.

15 MR. PASCUZZI: Correct. Now if the parties -- if Your  
16 Honor affirms your tentative ruling and we bring that to AAA  
17 and the parties, NCPA and SVP, seek to relitigate the removal  
18 costs issues in front of the arbitrator, we may very well come  
19 back to you in an adversary proceeding and ask you to basically  
20 tell them not to because you've already ruled on the issue,  
21 transmission --

22 THE COURT: Well, I --

23 MR. PASCUZZI: -- services agreement --

24 THE COURT: So again, if I don't -- if I take your  
25 suggestion and not Ms. Kim's, then I turn this tentative ruling

PG&E and Pacific Gas And Electric Company

1 into a ruling, and that is what it is. And if PG&E chooses to  
2 appeal it, it can do so. And presumably, the arbitration --  
3 the arbitrators would at least acknowledge that that's the  
4 decision of the Court. Whether they comply with it or follow  
5 it or ignore it, I don't -- I'm not going to speculate on it.  
6 At least -- it is what it is. But at least there's nothing  
7 from your point of view, am I correct -- if I memorialized this  
8 as an order, there's nothing more for me to do. And presumably  
9 the transmission agreement arbitration will proceed. And  
10 that's the way of the land.

11 MR. PASCUZZI: Well, that issue -- the disputes in the  
12 transmission services agreement will be dealt with in some  
13 other forum.

14 THE COURT: Yes.

15 MR. PASCUZZI: But our position is not arbitration.

16 THE COURT: No.

17 MR. PASCUZZI: But that's not for you to decide.

18 THE COURT: Okay.

19 MR. PASCUZZI: We're not asking you to decide.

20 THE COURT: And also leave aside any appellate review  
21 that PG&E may seek. That's, again, not on the table here.  
22 You're satisfied, Mr. Pascuzzi, and believe that the  
23 Department's interests are served, and frankly, justice is  
24 served in terms of the way the process is played out, that I  
25 don't need to go through kind of a fiction of asking you to

PG&E and Pacific Gas And Electric Company

1 make a motion for summary judgment when I've already  
2 determined, from my point of view, there are no facts in  
3 dispute. And therefore, the legal conclusion is that the  
4 Department has no liability by virtue of its withdrawal from  
5 the co-tenancy agreement. End of story, right?

6 MR. PASCUZZI: Your Honor, you -- in your tentative  
7 ruling on the bottom of page 3 is exactly the order that we  
8 would like. And yes, that's correct.

9 THE COURT: Okay.

10 MR. PASCUZZI: I wouldn't see the need or the  
11 usefulness of us to refile all our papers and -- but put it in  
12 motion for summary judgment on them because it's basically  
13 looking at the contract and arguing we've already done all  
14 that. We already to put everything before the Court.

15 THE COURT: Again, leaving aside what I have or  
16 haven't done in this case or my complaint of certain lawyers on  
17 the PG&E side for asking -- for I guess seeking in an order  
18 more than they ask for, the fact of the matter is that the  
19 underlying issue that I was asked to decide, in my opinion, was  
20 as framed without calling it an adversary proceeding. And I  
21 don't know that it needed to be. And certain contested matters  
22 can be disposed of by a motion for summary judgment without the  
23 presence of an adversary proceeding.

24 But I want to address a comment and a question to Ms.  
25 Kim. Again, Ms. Kim, I appreciate your reiterating the history

PG&E and Pacific Gas And Electric Company

1 of the case. But what you didn't mention -- and I didn't in  
2 preparing for this morning go back and listen to the audio of  
3 the oral argument we had on these matters. But it seemed to me  
4 there was a full discussion of what my choices were. And your  
5 side was very adamant about send it to arbitration. And I  
6 believe Mr. Pascuzzi was adamant. And I think my focus was on,  
7 well, what are my choices.

8 And if I determine as a matter of law that the  
9 agreement, the co-tenancy agreement, didn't expose the  
10 Department to any damages because of the way the document  
11 reads, then there's nothing to send to the arbitrator. But if,  
12 on the other hand, I'm persuaded on the arguments presented  
13 that there is a quantification of damages, then that's for  
14 another day for me to decide whether I should keep it here or  
15 send it to the tribunal. I mean, do you have a different  
16 recollection of the focus of the conversation on the oral  
17 argument?

18 MS. KIM: So again, the reason that we were focusing  
19 on that is because the question before the Court was is the  
20 contract executory, has it been terminated, can it be  
21 terminated without DWR having to pay the removal costs, and is  
22 there -- and what happens to DWR's claim amount at that point.  
23 Right.

24 THE COURT: Right. Right.

25 MS. KIM: So --

PG&E and Pacific Gas And Electric Company

1 THE COURT: And which therefore gets back to the  
2 basic. Executory contract 101 is when they exercise their  
3 right back in 2018, was there anything more to do? Was the  
4 contract anything other than a -- the right of one counterparty  
5 to exercise its rights long before the bankruptcy? And one  
6 could easily have surmised that by the date of the petition in  
7 20- -- when was it, 2019? Seems like --

8 MS. KIM: Yes.

9 THE COURT: -- long ago, January, there was nothing to  
10 assume because the contract had already been terminated. And  
11 the clock was just running out on the twelve months. And  
12 obviously, that wasn't the focus at that time, but it could  
13 have been disposed of at that time.

14 And frankly, if the Department or the company had  
15 chosen to bring an adversary proceeding on January 20th of 2019  
16 to determine that there is no contract to be assumed, we'd have  
17 the same discussion. I'd make the same legal question. Does  
18 the contract lend itself to some preservation, or did the  
19 contractual relationship terminate before the bankruptcy?

20 I was also thinking about this case that at least none  
21 of you were around when you drafted -- you didn't draft that  
22 agreement. I guess that was around, but I didn't draft it.  
23 And maybe it should have been drafted a little differently.

24 But anyway, I (audio interference). If a fly had been  
25 on the wall in the courtroom, of the virtual courtroom, and had



PG&E and Pacific Gas And Electric Company

1 listened to the argument, I don't think that fly would have  
2 reasonably determined that the issue couldn't be (audio  
3 interference) and you are now saying, well, it couldn't have  
4 been done that way, it should have been done by adversary  
5 proceeding. But I --

6 MS. KIM: Well, so just -- sorry, Your Honor. I don't  
7 mean to interrupt. But actually, I don't know if it's my  
8 internet connection or the Court's internet connection, but  
9 it's -- it got a little choppy.

10 THE COURT: Yeah. I know it did. I know it did. So  
11 go ahead. And interrupted you.

12 MS. KIM: Okay.

13 THE COURT: Go ahead and say what you got to say.

14 MS. KIM: No. So it is -- at the time when this was  
15 an executoriness issue, when we were contesting opposing DWR's  
16 termination of the -- of its participation in the contract,  
17 then all of those issues made sense to deal with because what  
18 we were talking about was, well, could DWR terminate its  
19 participation. Exactly what Your Honor said is, is there a  
20 contract, at least with DWR, to -- post-petition to assume as  
21 of the effective date. And where we came out was -- and  
22 because the removal costs played into that issue, that's how  
23 the removal costs became an issue before the Court.

24 Where I --what I do not see is how once the  
25 executoriness issue has been dealt with and there is no

PG&E and Pacific Gas And Electric Company

1 executory contract because DWR has terminated its participation  
2 in the agreement, why -- how there is still an issue of the  
3 removal costs outside of post-termination, surviving  
4 termination, that is -- would still -- would have been raised  
5 or been before the Court.

6 THE COURT: Well, now, that's a fair question, but  
7 that's why I'm frustrated that you didn't respond. Again, when  
8 I write my ruling and asked for briefing and I don't get an  
9 argument, I'm wondering, well, okay. I mean, I have to say I  
10 found that the response you said that says there's no more core  
11 matter, we're just going elsewhere, I made myself -- my own  
12 personal view known. It's not -- again, it's not personal.  
13 I'm not angry or spiteful. I'm just -- I was surprised,  
14 actually. And I don't think that -- I'll just leave it at  
15 that. And --

16 MS. KIM: And, Your Honor, just to -- that was, first  
17 of all -- probably in retrospect was not the way it should have  
18 been phrased. I think what it was, was responding to the fact  
19 that the -- in the memorandum decision, the Court retained  
20 jurisdiction because of these core claims. But it wasn't  
21 intended to be a reconsideration or a -- sorry. It wasn't  
22 intended to be spiting the Court. It was intended to be all of  
23 the issues that were before the Court that the Court retained  
24 jurisdiction over, because they were core, are no longer before  
25 the Court because the issues that were -- the relief that was

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1 requested in the motion, in DWR's motion, have been resolved  
2 and satisfied.

3 THE COURT: Okay. I got it. Well, look, I -- you  
4 can -- you can ask the Appellate Court if -- to come out that  
5 way. I'm satisfied that the case was presented. And I'm not  
6 trying to set you up for criticism for saying you left a -- you  
7 should have made a different argument. But I'm just saying,  
8 based upon the way, over a span of time from pre-petition  
9 events to the activity of the very cumbersome and huge problem  
10 that you -- when your firm and your lawyers have for assembling  
11 and keeping track of thousands of executory contracts and the  
12 way Mr. Pascuzzi and other representatives of governmental  
13 agencies particularly preserve their position and the  
14 complexity of the thousands of contracts that are swept up in  
15 the confirmation process, that makes all of this more unique or  
16 less than the cookie-cutter kind of situation where there's a  
17 discrete contract that's either assumed or rejected.

18 And then when we come to that convergence of  
19 cross-motions, almost cross-motions, but one side saying send  
20 this all to arbitration, the other side says keep it all here,  
21 to me context is everything. And those two motions converging  
22 and the oral argument itself focusing on the issue and in  
23 particular PG&E's adamant view that because it was busy dealing  
24 with some with this other issue, sort of the collateral issue,  
25 let's reserve the point on the merits, that, to me, leads me to

PG&E and Pacific Gas And Electric Company

1 a conclusion that the matter was adequately framed.

2 To the extent that one might have said an adversary  
3 proceeding might have been the better way, it was functionally  
4 the same. And I do believe that notwithstanding your term, I  
5 don't believe an adversary proceeding is jurisdictionally  
6 required. And to me, the course of conduct of the way this  
7 dispute played out afforded both sides adequate due process.  
8 And nothing else would have made a difference.

9 And having thought about whether I should put the  
10 Department to the burden of filing essentially the same legal  
11 argument with a different heading called motion for summary  
12 judgment, that that just perpetuates wasteful time and effort  
13 of lawyers' time and clients being billed for it.

14 So I'm going to stick with my tentative. I will ask  
15 Mr. Pascuzzi to put it in the form of an order. And I believe  
16 then that that is the dispositive order. I don't -- there is  
17 no -- I don't -- I mean, the rules are such that I don't think  
18 I have to call it a judgment. The rules talk about an order  
19 that's dispositive is effectively a judgment. So I don't care  
20 what you call it. And if you're more comfortable doing it some  
21 other way, Mr. Pascuzzi, and Ms. Kim agrees, then I'll let you  
22 two both figure out the right way to do it.

23 So far as I'm concerned, the matter is closed. And  
24 I've made the ruling. And the conclusion that I reach is that,  
25 by virtue of the Department's exercise of its rights under the

PG&E and Pacific Gas And Electric Company

1 co-tenancy agreement and the way I anticipated and read the  
2 contracts, the Department's interpretation seems proper to me.  
3 And there simply is no trigger that suggests there are monetary  
4 damages that need to be calculated and perhaps might better be  
5 calculated by an arbitrator.

6 Is that clear enough, Mr. Pascuzzi, to -- I mean, it's  
7 just a slight elaboration on page 3 of my tentative.

8 MR. PASCUZZI: Yeah. I'll stick with page 3, and  
9 we'll see where we go from there. And --

10 THE COURT: Okay.

11 MR. PASCUZZI: I'll exchange draft with Ms. Kim, and  
12 we'll get it to you. If we have a dispute, we'll let you know.

13 THE COURT: Okay.

14 MS. KIM: Your Honor, just for purposes of completing  
15 the record, so we -- as I mentioned earlier, I was prepared to  
16 discuss the merits if Your Honor was going to deny our request  
17 and on the -- and was raising that here as opposed to in our  
18 brief, because at the time, our reading of the papers was that  
19 that issue, the issue of the post-termination removal costs,  
20 was not -- had not been before the Court. And I understand  
21 that Your Honor has a different view of things. And of course,  
22 that's that is Your Honor's.

23 So am I to take it that the -- if I were to try to  
24 argue the merits today at this point, that Your Honor's view is  
25 that we have at this point waived those?

PG&E and Pacific Gas And Electric Company

1 THE COURT: Let's put it this way. I'm not going to  
2 invite you to argue the merits today because I believe you had  
3 ample opportunity to do it. And it would be unfair to the  
4 Department to turn this into an oral argument about the merits  
5 when I said it was a ruling on an expedited basis to decide  
6 what I should make of what you filed when you did file it.

7 If an Appellate Court determines that I should have  
8 addressed the merits and I should address the merits, I guess  
9 they'll send it back to me. But for now, I'm not going to  
10 worry about that. So your request to revisit the merits is  
11 declined with regrets -- with no regrets.

12 Okay, thank you all.

13 MS. KIM: Understood.

14 THE COURT: Thank you for your time.

15 MS. KIM: Thank you.

16 THE COURT: I look forward to seeing the order.

17 MS. KIM: Thank you, Your Honor.

18 MR. PASCUZZI: Thank you, Your Honor.

19 THE COURT: And that's going to conclude the hearing.

20 (Whereupon these proceedings were concluded at 10:52 AM)

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## C E R T I F I C A T I O N

I, Michael Drake, certify that the foregoing transcript is a true and accurate record of the proceedings.



/s/ MICHAEL DRAKE, CER-513, CET-513

eScribers

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Date: April 14, 2022

|  |  |   |   |   |
|--|--|---|---|---|
|  | 22:5;23:9,9;24:22;<br>26:2;29:1  | 6:4;22:13   | <b>behalf (4)</b><br>3:13,15,21;6:23  | <b>CDWR (1)</b><br>9:18   |
| <b>\$</b>  | <b>agreements (3)</b><br>7:3;12:18,19  | <b>argument (10)</b><br>4:11;6:3;23:3,17;<br>25:1;26:9;27:7,22;<br>28:11;30:4 | <b>believes (1)</b><br>16:6   | <b>CDWR's (5)</b><br>9:16,17,18,22,25   |
| <b>\$101,026.75 (1)</b><br>7:22  | <b>agrees (1)</b><br>28:21   | <b>arguments (1)</b><br>23:12   | <b>Benvenuto (1)</b><br>3:13  | <b>certain (2)</b><br>22:16,21  |
| <b>A</b>   | <b>ahead (3)</b><br>5:1;25:11,13   | <b>around (2)</b><br>24:21,22   | <b>better (2)</b><br>28:3;29:4  | <b>choices (2)</b><br>23:4,7  |
| <b>AAA (3)</b><br>20:1,11,16   | <b>air (1)</b><br>15:7   | <b>aside (2)</b><br>21:20;22:15   | <b>billed (1)</b><br>28:13  | <b>chooses (1)</b><br>21:1  |
| <b>accept (1)</b><br>4:8   | <b>allow (1)</b><br>16:2   | <b>aspect (1)</b><br>9:2  | <b>billing (1)</b><br>12:7  | <b>choppy (1)</b><br>25:9   |
| <b>acknowledge (1)</b><br>21:3   | <b>Almendras (3)</b><br>3:18,19,20   | <b>assembling (1)</b><br>27:10  | <b>both (7)</b><br>7:2;8:1;12:16;18:16;<br>19:5;28:7,22                           | <b>chosen (1)</b><br>24:15  |
| <b>activity (1)</b><br>27:9  | <b>almost (1)</b><br>27:19   | <b>assert (2)</b><br>9:9,20   | <b>bother (1)</b><br>19:13  | <b>chronology (1)</b><br>4:21   |
| <b>actually (4)</b><br>12:11,20;25:7;26:14   | <b>alternative (5)</b><br>12:11;14:24;15:11,<br>22;16:5  | <b>asserted (1)</b><br>6:17   | <b>bottom (1)</b><br>22:7   | <b>claim (32)</b><br>7:11,21,25;8:12,13;<br>9:7,8,16,17,18,19;10:8,<br>8,14,16,18,22;11:3,6,7,<br>8,9,20,20;13:5,7,8;<br>15:17;16:13;17:15,16;<br>23:22 |
| <b>adamant (3)</b><br>23:5,6;27:23   | <b>among (2)</b><br>7:1;12:20  | <b>assume (2)</b><br>24:10;25:20  | <b>brief (12)</b><br>10:1,5,7;11:22;12:3;<br>13:19;15:7,9,12;18:6;<br>19:25;29:18 | <b>claims (5)</b><br>5:8;10:11,17;12:7;<br>26:20  |
| <b>addition (1)</b><br>9:18  | <b>amount (4)</b><br>5:25;6:17;7:22;<br>23:22  | <b>assumed (4)</b><br>7:10,21;24:16;27:17                                     | <b>briefed (1)</b><br>18:3  | <b>clear (6)</b><br>4:11,15;9:14;13:13,<br>14;29:6  |
| <b>address (3)</b><br>13:13;22:24;30:8   | <b>ample (1)</b><br>30:3   | <b>assumption (3)</b><br>6:16,18;15:17  | <b>briefing (1)</b><br>26:8   | <b>clearly (1)</b><br>18:9  |
| <b>addressed (2)</b><br>18:24;30:8   | <b>angry (1)</b><br>26:13  | <b>attached (2)</b><br>10:4;12:12   | <b>briefs (1)</b><br>15:9   | <b>CLERK (1)</b><br>3:4   |
| <b>adequate (1)</b><br>28:7  | <b>Annadel (1)</b><br>3:20   | <b>attention (1)</b><br>18:21   | <b>bring (2)</b><br>20:16;24:15   | <b>clients (1)</b><br>28:13   |
| <b>adequately (1)</b><br>28:1  | <b>anticipated (1)</b><br>29:1   | <b>Attorney (2)</b><br>3:16,20  | <b>bringing (3)</b><br>3:6;8:12;13:8  | <b>clock (1)</b><br>24:11   |
| <b>adversary (17)</b><br>8:9,14,15,20;9:20;<br>13:7;16:1,4,8,15;<br>20:19;22:20,23;24:15;<br>25:4;28:2,5   | <b>appeal (2)</b><br>14:20;21:2  | <b>audience (1)</b><br>3:9  | <b>burden (1)</b><br>28:10  | <b>closed (1)</b><br>28:23  |
| <b>affirmative (1)</b><br>9:18   | <b>appearance (1)</b><br>3:17  | <b>audio (3)</b><br>23:2;24:24;25:2   | <b>busy (1)</b><br>27:23  | <b>cocounsel (1)</b><br>3:16  |
| <b>affirms (2)</b><br>20:7,16  | <b>appearances (1)</b><br>3:11   | <b>authorized (1)</b><br>10:11  | <b>C</b>  | <b>collateral (1)</b><br>27:24  |
| <b>afforded (1)</b><br>28:7  | <b>appearing (1)</b><br>3:20   | <b>avenue (2)</b><br>4:5,10   | <b>calculated (2)</b><br>29:4,5   | <b>colleagues (1)</b><br>15:4   |
| <b>afternoon (1)</b><br>20:2   | <b>appellate (3)</b><br>21:20;27:4;30:7  | <b>B</b>  | <b>CALIFORNIA (4)</b><br>3:1,21;5:6;9:7   | <b>comfortable (1)</b><br>28:20   |
| <b>again (9)</b><br>15:3;18:16;20:24;<br>21:21;22:15,25;23:18;<br>26:7,12  | <b>appreciate (1)</b><br>22:25   | <b>back (9)</b><br>5:5;6:14;15:8;19:18;<br>20:19;23:2;24:1,3;30:9             | <b>Call (3)</b><br>3:3;28:18,20   | <b>commence (1)</b><br>12:4   |
| <b>against (1)</b><br>13:5   | <b>APRIL (1)</b><br>3:1  | <b>bankruptcy (4)</b><br>8:9;15:2;24:5,19                                     | <b>called (1)</b><br>28:11  | <b>comment (2)</b><br>4:2;22:24   |
| <b>agencies (5)</b><br>5:6,11;6:6,19;27:13   | <b>arbitrate (2)</b><br>14:16;18:4   | <b>bars (1)</b><br>8:11   | <b>Calling (2)</b><br>3:6;22:20   | <b>company (3)</b><br>16:14;20:1;24:14  |
| <b>agency's (1)</b><br>5:21  | <b>arbitrated (1)</b><br>13:6  | <b>based (2)</b><br>8:8;27:8  | <b>came (1)</b><br>25:21  | <b>compelling (1)</b><br>9:6  |
| <b>ago (1)</b><br>24:9   | <b>arbitration (19)</b><br>4:6;5:10;7:23;9:6,<br>13;12:5,9;13:17;14:7,<br>17;15:10;19:23;20:1,4;<br>21:2,9,15;23:5;27:20 | <b>basic (1)</b><br>24:2  | <b>can (9)</b><br>16:13;17:21;20:4,11;<br>21:2;22:22;23:20;27:4,<br>4             | <b>complaint (1)</b><br>22:16   |
| <b>agreed (1)</b><br>10:7  | <b>arbitrator (5)</b><br>13:15;14:21;20:18;<br>23:11;29:5  | <b>basically (2)</b><br>20:19;22:12   | <b>care (1)</b><br>28:19  | <b>completing (1)</b><br>29:14  |
| <b>agreement (35)</b><br>4:3,6,12;6:16,17;7:2,<br>10,15,17,19,20;8:6;<br>9:12;12:4,6,16,17,24;<br>13:2;18:20,25;19:8,16,<br>21;20:9,12,23;21:9,12; | <b>arbitrators (2)</b><br>14:8;21:3  | <b>basis (5)</b><br>5:9;6:18;11:7,9;30:5                                      | <b>case (5)</b><br>17:2;22:16;23:1;<br>24:20;27:5                                 | <b>complexity (1)</b><br>27:14  |
|  | <b>argue (3)</b><br>6:9;29:24;30:2   | <b>became (1)</b><br>25:23  | <b>Castle (4)</b><br>7:10,15,16,19  | <b>comply (1)</b><br>21:4   |
|  | <b>arguing (2)</b>   | <b>become (1)</b><br>7:19   |   |   |
|  |  | <b>began (1)</b><br>15:16   |   |   |



|  |  |   |  | E                                       |
|--|--|---|--|---|
| <b>concerned (2)</b><br>12:9;28:23   | <b>co-tenant (2)</b><br>7:15;12:5  | <b>day (1)</b><br>23:14   | <b>determines (1)</b><br>30:7  |   |
| <b>concession (1)</b><br>10:14   | <b>co-tenants (2)</b><br>12:8;19:9   | <b>days (4)</b><br>5:25;6:10,20,23  | <b>determining (3)</b><br>7:9,14,24  | <b>earlier (1)</b><br>29:15             |
| <b>conclude (2)</b><br>5:1;30:19   | <b>co-tenant's (1)</b><br>9:21   | <b>deadline (4)</b><br>10:9,16,19;12:9  | <b>difference (1)</b><br>28:8  | <b>early (1)</b><br>17:2                |
| <b>concluded (1)</b><br>30:20  | <b>counsel (3)</b><br>3:7;10:6,7   | <b>deal (2)</b><br>20:11;25:17  | <b>different (4)</b><br>23:15;27:7;28:11;<br>29:21   | <b>easily (1)</b><br>24:6               |
| <b>conclusion (3)</b><br>22:3;28:1,24  | <b>counterclaim (2)</b><br>9:9;13:7  | <b>dealing (1)</b><br>27:23   | <b>differently (1)</b><br>24:23  | <b>effect (1)</b><br>13:20              |
| <b>conduct (1)</b><br>28:6   | <b>counterclaims (1)</b><br>9:21   | <b>dealt (4)</b><br>4:13;9:12;21:12;<br>25:25   | <b>difficult (1)</b><br>11:14  | <b>effective (3)</b><br>7:19;13:3;25:21 |
| <b>confirm (1)</b><br>3:25   | <b>counterparty (2)</b><br>5:18;24:4   | <b>debtors (4)</b><br>3:13;6:7;9:15;10:16   | <b>disagree (1)</b><br>9:1   | <b>effectively (2)</b><br>14:13;28:19   |
| <b>confirmation (7)</b><br>5:20,23;6:1,10,21;<br>18:1;27:15  | <b>couple (1)</b><br>12:12   | <b>debtor's (1)</b><br>4:16   | <b>discrete (1)</b><br>27:17   | <b>effort (1)</b><br>28:12              |
| <b>confusing (1)</b><br>15:14  | <b>course (4)</b><br>7:3;11:25;28:6;<br>29:21  | <b>decide (8)</b><br>13:12,15,18;21:17,<br>19;22:19;23:14;30:5                                    | <b>discuss (2)</b><br>17:15;29:16  | <b>either (2)</b><br>14:5;27:17         |
| <b>confusion (1)</b><br>12:10  | <b>Court (112)</b><br>3:3,4,8,18,23,25;4:7,<br>10,24;5:9,12;6:22;7:5,<br>7,24;8:1,15,19,23;9:23;<br>10:11,21,24;11:2,5,9,<br>12,15,17,24;12:21,25;<br>13:9,11,14,22,25;14:3,<br>15,18,25;15:2,3,19,21;<br>16:4,5,11,19;17:11,16,<br>17,21,24;18:2,2,3,4,9,<br>13,17,19,21,23,25;<br>19:3,6,10,13,15,18,24,<br>25;20:6,7,8,11,14,22,<br>24;21:4,14,16,18,20;<br>22:9,14,15;23:19,24;<br>24:1,9;25:10,13,23;<br>26:5,6,19,22,23,23,25;<br>27:3,4;29:10,13,20;<br>30:1,7,14,16,19 | <b>declared (2)</b><br>14:21;20:4   | <b>discussion (2)</b><br>23:4;24:17  | <b>elaboration (1)</b><br>29:7          |
| <b>connection (2)</b><br>25:8,8  |  | <b>decision (6)</b><br>9:24,24;14:19;20:3;<br>21:4;26:19  | <b>disposed (2)</b><br>22:22;24:13   | <b>else (1)</b><br>28:8                 |
| <b>consent (1)</b><br>12:8   |  | <b>declaration (2)</b><br>10:5;12:13  | <b>dispositive (2)</b><br>28:16,19   | <b>elsewhere (2)</b><br>4:13;26:11      |
| <b>contested (2)</b><br>15:16;22:21  |  | <b>declaratory (3)</b><br>8:8;17:6,8  | <b>dispute (15)</b><br>4:3,12;5:24;6:2;7:9;<br>9:11,18,25;12:5,7;<br>15:2;18:18;22:3;28:7;<br>29:12                        | <b>email (4)</b><br>10:19;12:12,12;20:1 |
| <b>contesting (1)</b><br>25:15   |  | <b>declined (2)</b><br>12:10;30:11  | <b>disputes (2)</b><br>12:16;21:11   | <b>emails (1)</b><br>10:3               |
| <b>context (4)</b><br>8:12;16:4,13;27:21   |  | <b>deemed (3)</b><br>10:8,17;12:6   | <b>docket (10)</b><br>4:19;5:7,20;6:14;<br>7:12;9:8,24;10:17;<br>11:24;12:1  | <b>end (4)</b><br>4:2;5:21;8:3;22:5     |
| <b>contract (19)</b><br>5:13,17,19,25;7:20;<br>8:8;17:25;18:12;22:13;<br>23:20;24:2,4,10,16,18;<br>25:16,20;26:1;27:17     |  | <b>deems (1)</b><br>8:1   | <b>document (2)</b><br>5:8;23:10   | <b>ended (3)</b><br>4:22,23;12:10       |
| <b>contracts (7)</b><br>5:7,16;18:16;19:3;<br>27:11,14;29:2  |  | <b>default (3)</b><br>16:20,21;17:7   | <b>done (7)</b><br>14:21;16:8,13;22:13,<br>16;25:4,4   | <b>engaged (1)</b><br>6:25              |
| <b>contractual (1)</b><br>24:19  | <b>courtroom (2)</b><br>24:25,25   | <b>defenses (1)</b><br>9:21   | <b>down (1)</b><br>18:19   | <b>enjoin (2)</b><br>16:3;19:20         |
| <b>convergence (1)</b><br>27:18  | <b>courts (1)</b><br>10:12   | <b>denied (1)</b><br>11:25  | <b>draft (3)</b><br>24:21,22;29:11   | <b>enjoined (1)</b><br>4:16             |
| <b>converging (1)</b><br>27:21   | <b>court's (4)</b><br>4:8;5:9;10:15;25:8   | <b>Dennis (1)</b><br>3:5  | <b>drafted (2)</b><br>24:21,23   | <b>enough (1)</b><br>29:6               |
| <b>conversation (1)</b><br>23:16   | <b>CPA (1)</b><br>19:16  | <b>deny (1)</b><br>29:16  | <b>due (1)</b><br>28:7   | <b>ensure (1)</b><br>16:8               |
| <b>cookie-cutter (1)</b><br>27:16  | <b>criticism (1)</b><br>27:6   | <b>denying (1)</b><br>5:10  | <b>DWR (21)</b><br>5:8;6:23,24;7:9,17;<br>8:5;10:5;12:8,10,23;<br>13:1,3,4,5;14:14;<br>18:14;19:16;23:21;<br>25:18,20;26:1 | <b>entered (1)</b><br>5:23              |
| <b>core (4)</b><br>13:12;26:10,20,24   | <b>cross-motions (2)</b><br>27:19,19   | <b>Department (12)</b><br>3:15,21;4:3;7:11;<br>9:7;13:13;14:8;22:4;<br>23:10;24:14;28:10;<br>30:4 | <b>DWR's (17)</b><br>6:15;7:15,24;9:10;<br>10:7;12:21,22;14:12,<br>15;15:16;17:10,22;<br>18:9,12;23:22;25:15;<br>27:1      | <b>entering (1)</b><br>16:19            |
| <b>corporation (1)</b><br>3:6  | <b>cumbersome (1)</b><br>27:9  | <b>Department's (3)</b><br>21:23;28:25;29:2   |  | <b>entity (1)</b><br>5:24               |
| <b>costs (17)</b><br>7:18;8:7;9:22;12:19,<br>23;13:2;14:14;16:6;<br>17:10,23;18:15;20:18;<br>23:21;25:22,23;26:3;<br>29:19 | <b>cure (5)</b><br>5:12,17,25;6:6,17   | <b>descriptions (1)</b><br>5:16   |  | <b>entry (1)</b><br>9:5                 |
| <b>co-tenancy (13)</b><br>6:16,17;7:2;8:6;12:4,<br>6,16,24;18:25;20:12;<br>22:5;23:9;29:1                                  | <b>D</b>   | <b>determine (4)</b><br>5:18;13:16;23:8;<br>24:16   |  | <b>equivalent (1)</b><br>16:21          |
|  | <b>damages (5)</b><br>13:20;15:8;23:10,13;<br>29:4   | <b>determined (2)</b><br>22:2;25:2  |  | <b>essentially (2)</b><br>16:19;28:10   |
|  | <b>date (5)</b><br>6:1,21;12:4;24:6;<br>25:21  |   |  | <b>estimated (1)</b><br>7:17            |

|   |  |   |   |  |
|---|--|---|---|--|
| except (1)<br>8:17  | filing (3)<br>8:9;10:18;28:10                | Good (4)<br>3:9,12,14,19  | 7:1,13;12:14  | 7:1;9:10;16:3,10;<br>18:1,5;19:15;20:18;<br>25:17;26:23,25   |
| exchange (4)<br>10:3,19;12:12;29:11   | final (2)<br>4:1;17:14                       | governed (1)<br>15:18   | inadequate (2)<br>5:15;6:19   | item (1)<br>5:18   |
| exchanges (1)<br>12:12  | finding (5)<br>5:12;8:5;10:13;13:1;<br>14:11 | governmental (2)<br>5:24;27:12  | inclined (1)<br>17:14   |  |
| Excuse (1)<br>20:8  | firm (1)<br>27:10                            | granting (1)<br>17:8  | including (1)<br>17:2   | <b>J</b>   |
| executoriness (6)<br>5:13,24;13:23;15:17;<br>25:15,25                           | first (1)<br>26:16                           | ground (1)<br>5:15  | incorporate (1)<br>15:25  | Jane (1)<br>3:12   |
| executory (10)<br>5:7,13,18;6:15;7:20;<br>17:25;23:20;24:2;26:1;<br>27:11       | fly (2)<br>24:24;25:1                        | guess (5)<br>8:25;14:20;22:17;<br>24:22;30:8  | independent (1)<br>10:21  | January (2)<br>24:9,15   |
| exercise (3)<br>24:2,5;28:25  | focus (3)<br>23:6,16;24:12                   |   | indulge (1)<br>5:4  | joined (1)<br>19:23  |
| Exhibit (1)<br>10:4   | focusing (2)<br>23:18;27:22                  | <b>H</b>  | injunction (3)<br>9:6;10:13;19:19   | judge (1)<br>11:22   |
| expedited (1)<br>30:5   | follow (1)<br>21:4                           | hand (1)<br>23:12   | Instead (5)<br>5:22;6:17;9:9;13:5;<br>15:8  | judgment (9)<br>16:13,16;17:7;22:1,<br>12,22;28:12,18,19   |
| explain (4)<br>4:22;8:22;13:11;<br>15:1   | form (1)<br>28:15                            | happened (1)<br>10:19   | insufficient (1)<br>9:17  | jurisdiction (5)<br>5:10;9:25;11:23;<br>26:20,24   |
| expose (1)<br>23:9  | forth (3)<br>6:2;9:19,25                     | happens (2)<br>17:9;23:22   | intended (3)<br>26:21,22,22   | jurisdictional (5)<br>8:10,16,24,25;9:2  |
| expressly (1)<br>8:11   | forum (1)<br>21:13                           | happy (1)<br>4:24   | interest (2)<br>7:15,23   | jurisdictionally (1)<br>28:5   |
| extend (1)<br>12:8  | forward (2)<br>20:4;30:16                    | heading (1)<br>28:11  | interests (1)<br>21:23  | justice (1)<br>21:23   |
| extending (1)<br>10:15  | found (4)<br>18:3,4;19:15;26:10              | heard (2)<br>16:10;19:20  | interference (2)<br>24:24;25:3  |  |
| extent (2)<br>16:5;28:2   | frame (1)<br>16:3                            | hearing (2)<br>18:8;30:19   | internet (2)<br>25:8,8  | <b>K</b>   |
|   | framed (4)<br>18:11,13;22:20;28:1<br>3:1     | help (1)<br>4:22  | interpretation (1)<br>29:2  | Karotkin (1)<br>6:7  |
| <b>F</b>  | FRANCISCO (1)<br>3:1                         | helpful (1)<br>4:21   | interrelated (1)<br>12:18   | keep (2)<br>23:14;27:20  |
| fact (2)<br>22:18;26:18   | frankly (4)<br>17:15;19:13;21:23;<br>24:14   | history (2)<br>17:20;22:25  | interrupt (2)<br>20:9;25:7  | keeping (1)<br>27:11   |
| facts (2)<br>18:18;22:2   | Friday (3)<br>10:6;20:1,2                    | Hold (1)<br>18:19   | interrupted (1)<br>25:11  | Keller (1)<br>3:12   |
| fair (1)<br>26:6  | front (3)<br>12:25;13:23;20:18               | Honor (28)<br>3:7,12,14,19;4:18,<br>19:5,4;6:3,11;10:10;<br>11:23;17:1,2,7,12,13,<br>19:19;22:20:16;22:6;<br>25:6,19;26:16;29:14,<br>16,21;30:17,18 | intervene (2)<br>11:21,25   | Kim (50)<br>3:10,12,12,13;4:16,<br>18:5,4;7:6,8;8:17,22;<br>9:2;10:23;11:1,4,8,10,<br>13,16,18;13:10,22,25;<br>14:2,11,23;15:1,15,20,<br>24;16:18;17:1,12,17;<br>18:7;22:25,25;23:18,<br>25;24:8;25:6,12,14;<br>26:16;28:21;29:11,14;<br>30:13,15,17 |
| far (3)<br>17:18,19;28:23   | frustrated (1)<br>26:7                       | Honorable (1)<br>3:4  | into (3)<br>21:1;25:22;30:4   | Kim's (1)<br>20:25   |
| fast (1)<br>4:20  | full (2)<br>15:7;23:4                        | Honor's (2)<br>29:22,24   | intriguing (1)<br>15:13   | kind (4)<br>11:19;17:6;21:25;<br>27:16   |
| February (2)<br>7:8;9:5   | functionally (1)<br>28:3                     | hopefully (1)<br>4:22   | invite (1)<br>30:2  | known (1)<br>26:12   |
| few (2)<br>4:20;17:3  | fundamental (1)<br>13:15                     | hot (1)<br>15:7   | invited (2)<br>16:20,25   | knows (1)<br>6:11  |
| fiction (1)<br>21:25  | further (2)<br>6:22;7:25                     | huge (1)<br>27:9  | involving (3)<br>9:11;16:1,1  |  |
| figure (2)<br>5:1;28:22   | future (2)<br>7:17;12:23                     | hyper-technical (1)<br>17:20  | irrelevant (2)<br>18:22;19:15   | <b>L</b>   |
| file (13)<br>6:1,13;9:19;10:1,24;<br>11:22;13:5,12,18;16:7,<br>12,16;30:6       | <b>G</b>                                     |   | issue (27)<br>6:22;8:21;12:21;<br>13:12,23,24;14:13;<br>15:17;16:6;17:22;18:9,<br>13;19:24;20:20;21:11;<br>22:19;25:2,15,22,23,<br>25;26:2;27:22,24,24;<br>29:19,19 | land (1)   |
| filed (15)<br>5:6;6:6,10,12,22;7:9;<br>8:13;9:4,5;10:5,5,23;<br>15:9;19:25;30:6 | General's (2)<br>3:16,20                     | <b>I</b>  | issued (1)<br>9:23  |  |
|   | gets (2)<br>7:8;24:1                         | ignore (1)<br>21:5  | issues (11)   |  |
|   | given (3)<br>3:24;6:20,20                    | important (3)   |   |  |

|   |  |  |   |   |
|---|--|--|---|---|
| 21:10<br><b>language (2)</b><br>5:21;6:5<br><b>larger (1)</b><br>9:11<br><b>last (2)</b><br>12:3;18:8<br><b>late (1)</b><br>20:2<br><b>later (1)</b><br>6:9<br><b>law (3)</b><br>13:19;14:9;23:8<br><b>lawyers (2)</b><br>22:16;27:10<br><b>lawyers' (1)</b><br>28:13<br><b>leads (1)</b><br>27:25<br><b>lease (1)</b><br>5:19<br><b>leases (1)</b><br>5:17<br><b>least (5)</b><br>21:3,6,6;24:20;25:20<br><b>leave (2)</b><br>21:20;26:14<br><b>leaving (1)</b><br>22:15<br><b>left (2)</b><br>13:16;27:6<br><b>legal (3)</b><br>22:3;24:17;28:10<br><b>lend (1)</b><br>24:18<br><b>less (1)</b><br>27:16<br><b>level (1)</b><br>4:18<br><b>liability (5)</b><br>13:16,17;17:22;<br>18:10;22:4<br><b>liable (3)</b><br>8:7;14:14;18:14<br><b>lifted (1)</b><br>10:12<br><b>line (1)</b><br>7:18<br><b>listen (1)</b><br>23:2<br><b>listened (1)</b><br>25:1<br><b>litigated (1)</b><br>10:12<br><b>litigation (1)</b><br>12:15<br><b>little (3)</b><br>4:21;24:23;25:9<br><b>long (2)</b><br>24:5,9<br><b>longer (1)</b><br>26:24<br><b>look (5)</b> | 4:8;12:3;17:21;27:3;<br>30:16<br><b>looked (3)</b><br>12:20;15:15;18:17<br><b>looking (1)</b><br>22:13<br><br><b>M</b><br><br><b>mad (1)</b><br>4:25<br><b>makes (2)</b><br>9:14;27:15<br><b>making (2)</b><br>4:7,14<br><b>March (11)</b><br>9:23;10:1,3,9,20,20;<br>11:21,25;12:2,2,3<br><b>material (1)</b><br>18:17<br><b>matter (16)</b><br>3:6,4;1;5:1,8;9:1;<br>13:12,19;14:9;15:7,10;<br>16:22;22:18;23:8;<br>26:11;28:1,23<br><b>matters (3)</b><br>9:3;22:21;23:3<br><b>May (6)</b><br>5:5;10:7,10;14:16;<br>20:18;21:21<br><b>maybe (3)</b><br>13:17;17:18;24:23<br><b>mean (11)</b><br>4:24;11:11,13;17:20;<br>18:15,20;23:15;25:7;<br>26:9;28:17;29:6<br><b>meant (1)</b><br>11:13<br><b>mediated (1)</b><br>7:3<br><b>mediation (2)</b><br>6:25;7:4<br><b>meeting (1)</b><br>10:18<br><b>memorandum (3)</b><br>9:24;20:3;26:19<br><b>memorialize (1)</b><br>14:9<br><b>memorialized (1)</b><br>21:7<br><b>mention (1)</b><br>23:1<br><b>mentioned (3)</b><br>19:5,25;29:15<br><b>merely (1)</b><br>18:12<br><b>merits (13)</b><br>11:24;13:13;15:13;<br>16:23;17:15;27:25;<br>29:16,24;30:2,4,8,8,10<br><b>might (4)</b><br>11:6;28:2,3;29:4<br><b>minimum (1)</b> | 15:6<br><b>minute (1)</b><br>18:19<br><b>modified (1)</b><br>10:13<br><b>modifying (1)</b><br>9:6<br><b>moment (1)</b><br>8:22<br><b>monetary (1)</b><br>29:3<br><b>Montali (1)</b><br>3:5<br><b>months (1)</b><br>24:11<br><b>mooted (1)</b><br>14:13<br><b>more (10)</b><br>6:19,20;13:12;17:4;<br>21:8;22:18;24:3;26:10;<br>27:15;28:20<br><b>Moreover (1)</b><br>9:16<br><b>morning (6)</b><br>3:9,12,14,19;16:15;<br>23:2<br><b>motion (39)</b><br>5:10;7:9,13,14;8:2,3,<br>4:9;5,8,10,10,14,15,20;<br>10:1;11:25;12:22,22;<br>13:1,6;14:12,15;15:16;<br>16:12,16,24;17:4,5,7,<br>21,22;18:12,24;22:1,<br>12,22;27:1,1;28:11<br><b>motions (3)</b><br>12:21;19:4;27:21<br><b>moved (2)</b><br>4:20;14:6<br><b>multiple (1)</b><br>9:11<br><b>myself (1)</b><br>26:11<br><br><b>N</b><br><br><b>nature (1)</b><br>6:16<br><b>NCPA (5)</b><br>4:4;6:25;11:21;20:5,<br>17<br><b>necessary (1)</b><br>16:9<br><b>need (5)</b><br>6:13;9:19;21:25;<br>22:10;29:4<br><b>needed (3)</b><br>4:15;6:19;22:21<br><b>Neither (2)</b><br>12:21;13:7<br><b>next (1)</b><br>9:3<br><b>ninety (4)</b><br>5:25;6:10,20,23 | <b>None (2)</b><br>18:8;24:20<br><b>Nor (5)</b><br>7:5,6;12:22;13:7,7<br><b>notice (2)</b><br>5:15,17<br><b>notwithstanding (1)</b><br>28:4<br><b>November (1)</b><br>6:24<br><b>number (6)</b><br>5:7;6:14;7:11,12;<br>9:8;17:1<br><br><b>O</b><br><br><b>object (4)</b><br>10:17;11:6,7,9<br><b>objected (2)</b><br>6:18;9:16<br><b>objecting (2)</b><br>5:14;11:8<br><b>objection (27)</b><br>5:11,12,14,19;6:1,7,<br>9,12,15,15,22;8:12,13;<br>9:9,16;10:8,8,14,16,17,<br>18,22;11:2,19;13:7;<br>15:18;16:14<br><b>objections (1)</b><br>5:6<br><b>obligation (4)</b><br>9:22;12:22;13:4;<br>17:10<br><b>obligations (1)</b><br>12:19<br><b>obviously (1)</b><br>24:12<br><b>October (1)</b><br>6:24<br><b>offered (1)</b><br>12:11<br><b>Office (2)</b><br>3:17,20<br><b>once (1)</b><br>25:24<br><b>one (11)</b><br>4:2;6:13;10:24,25;<br>13:18;18:7,23;24:4,5;<br>27:19;28:2<br><b>only (4)</b><br>18:23,25;19:1;20:4<br><b>oOo- (1)</b><br>3:2<br><b>open (1)</b><br>13:16<br><b>opinion (1)</b><br>22:19<br><b>opportunities (1)</b><br>18:6<br><b>opportunity (6)</b><br>15:12,12;16:7,9;<br>18:7;30:3<br><b>oppose (3)</b> | 16:17,24,25<br><b>opposed (1)</b><br>29:17<br><b>opposing (1)</b><br>25:15<br><b>oral (5)</b><br>6:3;23:3,16;27:22;<br>30:4<br><b>orally (1)</b><br>18:7<br><b>order (21)</b><br>3:3;4:20;5:10,20,22,<br>23;6:11;7:9,14;9:6;<br>10:15;17:3,7;18:2;<br>21:8;22:7,17;28:15,16,<br>18;30:16<br><b>original (1)</b><br>18:24<br><b>Otherwise (1)</b><br>12:5<br><b>out (8)</b><br>4:19;5:1;21:24;<br>24:11;25:21;27:4;28:7,<br>22<br><b>outside (2)</b><br>8:13;26:3<br><b>over (6)</b><br>4:20;9:25;11:23;<br>18:16;26:24;27:8<br><b>own (2)</b><br>7:16;26:11<br><br><b>P</b><br><br><b>page (3)</b><br>22:7;29:7,8<br><b>pages (1)</b><br>9:14<br><b>paid (6)</b><br>7:12,22,25;11:12,17;<br>18:21<br><b>papers (4)</b><br>13:6;18:11;22:11;<br>29:18<br><b>paragraph (1)</b><br>5:22<br><b>part (3)</b><br>9:11;12:15;18:14<br><b>participation (5)</b><br>8:6;12:24;25:16,19;<br>26:1<br><b>particular (1)</b><br>27:23<br><b>particularly (2)</b><br>16:14;27:13<br><b>parties (13)</b><br>7:1;8:11;9:11,19;<br>12:15,20;14:16;16:3,9;<br>19:16;20:3,15,17<br><b>parties' (1)</b><br>12:16<br><b>Pascuzzi (42)</b><br>3:8,10,14,15,23,25; |
|---|--|--|---|---|

|   |   |   |  |   |
|---|---|---|--|---|
| 6:4,5,11;15:7;16:12,<br>22:17;17,19;18:22,24;<br>19:2,5,7,12,14,22;20:7,<br>10,13,15,23;21:11,15,<br>17,19,22;22:6,10;23:6;<br>27:12;28:15,21;29:6,8,<br>11;30:18 | <b>post-petition (3)</b><br>7:22;16:6;25:20   | 7:21,24;9:16,17;<br>10:22   | <b>regarding (1)</b><br>9:21   | <b>Resources (5)</b><br>3:15,22;4:4;7:11;9:7  |
| <b>past (2)</b><br>4:20;10:6  | <b>post-termination (3)</b><br>14:14;26:3;29:19   | <b>proof-up (1)</b><br>16:22  | <b>regardless (4)</b><br>12:23;13:4;17:9,13  | <b>respect (4)</b><br>10:11;12:7;15:17;<br>17:9   |
| <b>Paul (1)</b><br>3:14   | <b>Power (2)</b><br>4:4;19:17   | <b>proper (1)</b><br>29:2   | <b>regrets (2)</b><br>30:11,11   | <b>respond (3)</b><br>5:16;16:20;26:7   |
| <b>pay (4)</b><br>7:17;9:22;17:10;<br>23:21   | <b>prayer (1)</b><br>8:2  | <b>properly (3)</b><br>16:3,8;19:15                                   | <b>reimburse (1)</b><br>12:23  | <b>responding (1)</b><br>26:18  |
| <b>payment (1)</b><br>13:2  | <b>preamble (1)</b><br>8:1  | <b>proposed (1)</b><br>5:22   | <b>reiterating (1)</b><br>22:25  | <b>response (1)</b><br>26:10  |
| <b>pending (2)</b><br>14:16;19:24   | <b>precipitous (1)</b><br>14:4  | <b>provide (1)</b><br>12:19   | <b>rejected (1)</b><br>27:17   | <b>result (1)</b><br>7:4  |
| <b>perhaps (1)</b><br>29:4  | <b>preclude (1)</b><br>7:24   | <b>provisions (1)</b><br>7:23   | <b>relationship (1)</b><br>24:19   | <b>resulting (1)</b><br>12:10   |
| <b>perpetuates (1)</b><br>28:12   | <b>prepared (2)</b><br>17:15;29:15  | <b>public (2)</b><br>7:5,6  | <b>relief (9)</b><br>8:1,2,3,8,12;17:4,6,8;<br>26:25   | <b>retain (1)</b><br>11:23  |
| <b>personal (2)</b><br>26:12,12   | <b>preparing (1)</b><br>23:2  | <b>purported (1)</b><br>5:16  | <b>relitigate (1)</b><br>20:17   | <b>retained (3)</b><br>9:25;26:19,23  |
| <b>persuaded (1)</b><br>23:12   | <b>pre-petition (1)</b><br>27:8   | <b>purpose (1)</b><br>12:18   | <b>remain (1)</b><br>16:7  | <b>retention (1)</b><br>5:9   |
| <b>petition (2)</b><br>8:5;24:6   | <b>presence (1)</b><br>22:23  | <b>purposes (3)</b><br>10:8,18;29:14                                  | <b>remains (1)</b><br>17:13  | <b>retrospect (1)</b><br>26:17  |
| <b>PG&amp;E (21)</b><br>3:6;4:23;6:8,24;<br>7:10;9:5;10:1;12:14;<br>13:3,5;16:24;17:3,23;<br>18:3,11;19:20,22;20:7;<br>21:1,21;22:17                              | <b>presented (2)</b><br>23:12;27:5  | <b>put (9)</b><br>6:21;12:22;18:13;<br>19:8;22:11,14;28:9,15;<br>30:1 | <b>remember (1)</b><br>17:1  | <b>reverse (1)</b><br>14:19   |
| <b>PG&amp;E's (9)</b><br>5:10;9:14,20;10:6,7;<br>12:22;13:6;18:13;<br>27:23   | <b>preservation (1)</b><br>24:18  |   | <b>removal (15)</b><br>8:7;9:22;12:23;13:2;<br>14:14;16:6;17:10,23;<br>18:15;20:17;23:21;<br>25:22,23;26:3;29:19 | <b>review (1)</b><br>21:20  |
| <b>phrased (1)</b><br>26:18   | <b>preserve (2)</b><br>6:9;27:13  | <b>Q</b>  | <b>removing (1)</b><br>7:18  | <b>reviewed (1)</b><br>20:2   |
| <b>placed (2)</b><br>5:8;14:15  | <b>presiding (1)</b><br>3:5   | <b>quantification (1)</b><br>23:13                                    | <b>reorganized (3)</b><br>3:13;9:15;10:16  | <b>revisionist (1)</b><br>17:20   |
| <b>plan (4)</b><br>7:23;9:6;10:13;18:1  | <b>presumably (2)</b><br>21:2,8   | <b>quickly (1)</b><br>14:6  | <b>reply (1)</b><br>10:5   | <b>revisit (1)</b><br>30:10   |
| <b>played (3)</b><br>21:24;25:22;28:7   | <b>pretend (1)</b><br>14:5  | <b>R</b>  | <b>report (1)</b><br>15:11   | <b>right (15)</b><br>3:8;10:22;11:5;<br>14:20;17:9,17,18;18:4;<br>22:5;23:23,24,24;24:3,<br>4;28:22 |
| <b>pleadings (1)</b><br>19:7  | <b>previous (1)</b><br>9:19   | <b>raised (6)</b><br>9:10;14:15;17:12,23;<br>18:8;26:4                | <b>representatives (1)</b><br>27:12  | <b>rights (2)</b><br>24:5;28:25   |
| <b>please (1)</b><br>3:11   | <b>principal (1)</b><br>7:21  | <b>raising (2)</b><br>11:4;29:17                                      | <b>request (7)</b><br>8:2,4;10:6,7;19:19;<br>29:16;30:10   | <b>Rock (4)</b><br>7:10,15,16,20  |
| <b>pleasure (2)</b><br>3:23;15:5  | <b>prior (2)</b><br>4:11;19:19  | <b>reach (1)</b><br>28:24   | <b>requested (3)</b><br>7:14,14;27:1   | <b>Rule (3)</b><br>8:11;15:18,24  |
| <b>point (8)</b><br>4:17;13:25;21:7;<br>22:2;23:22;27:25;<br>29:24,25   | <b>probably (1)</b><br>26:17  | <b>read (2)</b><br>15:9;29:1  | <b>requests (1)</b><br>14:12   | <b>ruled (1)</b><br>20:20   |
| <b>pointed (1)</b><br>4:19  | <b>problem (2)</b><br>16:11;27:9  | <b>reading (3)</b><br>5:19;19:13;29:18                                | <b>require (4)</b><br>5:3;7:17;10:1;13:2   | <b>rules (5)</b><br>8:9;15:25,25;28:17,<br>18   |
| <b>posit (1)</b><br>6:21  | <b>procedural (2)</b><br>16:2,2   | <b>reads (1)</b><br>23:11   | <b>required (1)</b><br>28:6  | <b>ruling (12)</b><br>4:1,1,14;14:4,9;<br>20:16,25;21:1;22:7;<br>26:8;28:24;30:5                    |
| <b>position (7)</b><br>4:5;6:6,7;13:14;<br>19:14;21:15;27:13  | <b>procedure (1)</b><br>8:10  | <b>reason (1)</b><br>23:18  | <b>requirement (2)</b><br>8:11,15  | <b>rulings (1)</b><br>4:7   |
|   | <b>procedures (1)</b><br>5:22   | <b>reasonably (1)</b><br>25:2   | <b>requires (1)</b><br>8:8   | <b>running (1)</b><br>24:11   |
|   | <b>proceed (1)</b><br>21:9  | <b>recall (3)</b><br>8:20;10:10;19:8                                  | <b>reserve (1)</b><br>27:25  |   |
|   | <b>proceeding (19)</b><br>8:9,14,16,20;9:20;<br>13:8;15:16;16:1,4,8,<br>15;19:23;20:19;22:20,<br>23;24:15;25:5;28:3,5 | <b>recollection (1)</b><br>23:16                                      | <b>resolved (3)</b><br>12:17;14:12;27:1  |   |
|   | <b>proceedings (1)</b><br>30:20   | <b>reconsideration (1)</b><br>26:21                                   |  | <b>S</b>  |
|   | <b>process (4)</b><br>16:2;21:24;27:15;<br>28:7   | <b>record (4)</b><br>5:20;19:9,10;29:15                               |  | <b>same (6)</b><br>10:10;12:15;24:17,<br>17;28:4,10   |
|   | <b>proof (5)</b>  | <b>refile (1)</b><br>22:11  |  |   |

|  |   |   |   |   |
|--|---|---|---|---|
| <b>SAN (1)</b><br>3:1                                    | 28:7                                      | <b>suggesting (1)</b><br>17:8   | 24:20   | <b>up (7)</b><br>4:22,23;5:21;12:10;<br>17:25;27:6,14   |
| <b>satisfied (3)</b><br>21:22;27:2,5                     | <b>Silicon (2)</b><br>4:4;19:17           | <b>suggestion (1)</b><br>20:25  | <b>thorough (1)</b><br>15:4   | <b>upon (2)</b><br>10:6;27:8  |
| <b>saw (1)</b><br>19:10                                  | <b>simply (3)</b><br>6:11;13:20;29:3      | <b>suggests (1)</b><br>29:3   | <b>thought (4)</b><br>4:21;15:6;16:12;<br>28:9  | <b>usefulness (1)</b><br>22:11  |
| <b>saying (7)</b><br>6:8;20:2,11;25:3;<br>27:6,7,19      | <b>situation (1)</b><br>27:16             | <b>summary (7)</b><br>16:12,16;17:6;22:1,<br>12,22;28:11                  | <b>thousands (2)</b><br>27:11,14  | <b>using (1)</b><br>5:21  |
| <b>schedules (4)</b><br>5:7,14;6:18,19                   | <b>skipping (1)</b><br>12:2               | <b>Sunday (1)</b><br>4:19   | <b>threat (1)</b><br>14:6   | <b>V</b>  |
| <b>screen (1)</b><br>3:16                                | <b>slight (1)</b><br>29:7                 | <b>sure (2)</b><br>4:7;9:2  | <b>tied (2)</b><br>17:25;18:11  | <b>Valdez's (2)</b><br>10:4;12:13   |
| <b>second (1)</b><br>10:15                               | <b>Slow (1)</b><br>18:19                  | <b>surmised (1)</b><br>24:6   | <b>times (2)</b><br>17:2,3  | <b>Valley (2)</b><br>4:4;19:17  |
| <b>section (1)</b><br>12:4                               | <b>someone's (1)</b><br>16:21             | <b>surprise (1)</b><br>15:6   | <b>today (2)</b><br>29:24;30:2  | <b>view (8)</b><br>4:17;16:20;21:7;<br>22:2;26:12;27:23;<br>29:21,24  |
| <b>seeing (2)</b><br>11:22;30:16                         | <b>somewhere (1)</b><br>19:10             | <b>surprised (1)</b><br>26:13   | <b>together (3)</b><br>7:3;12:17;16:10  | <b>virtual (1)</b><br>24:25   |
| <b>seek (2)</b><br>20:17;21:21                           | <b>sorry (3)</b><br>14:22;25:6;26:21      | <b>surviving (1)</b><br>26:3  | <b>took (4)</b><br>6:5,7;12:2;18:12   | <b>virtue (2)</b><br>22:4;28:25   |
| <b>seeking (1)</b><br>22:17                              | <b>sort (1)</b><br>27:24                  | <b>SVP (4)</b><br>6:25;11:21;20:5,17                                      | <b>track (1)</b><br>27:11   | <b>W</b>  |
| <b>seemed (1)</b><br>23:3                                | <b>sought (2)</b><br>11:21;17:4           | <b>swept (1)</b><br>27:14   | <b>transmission (12)</b><br>4:2,12;7:2,18;12:17;<br>18:20;19:8,20;20:9,21;<br>21:9,12 | <b>wait (1)</b><br>18:19  |
| <b>Seems (2)</b><br>24:7;29:2                            | <b>span (1)</b><br>27:8                   | <b>T</b>  | <b>treatment (1)</b><br>10:10   | <b>waivable (3)</b><br>8:16,17,25   |
| <b>send (7)</b><br>13:17;15:10;23:5,11,<br>15;27:19;30:9 | <b>specifically (1)</b><br>18:2           | <b>table (2)</b><br>17:9;21:21  | <b>tribunal (1)</b><br>23:15  | <b>waived (5)</b><br>12:7;13:21;18:3,4;<br>29:25  |
| <b>sense (1)</b><br>25:17                                | <b>speculate (1)</b><br>21:5              | <b>talk (1)</b><br>28:18  | <b>trigger (1)</b><br>29:3  | <b>wall (1)</b><br>24:25  |
| <b>sent (1)</b><br>20:1                                  | <b>spiteful (1)</b><br>26:13              | <b>talking (1)</b><br>25:18   | <b>try (1)</b><br>29:23   | <b>wants (2)</b><br>14:5,9  |
| <b>separate (1)</b><br>9:20                              | <b>spiting (1)</b><br>26:22               | <b>technically (1)</b><br>18:20   | <b>trying (3)</b><br>19:20,23;27:6  | <b>warrant (1)</b><br>10:14   |
| <b>serve (1)</b><br>6:1                                  | <b>state (5)</b><br>3:10;5:6,21;6:6,15    | <b>Tellingly (1)</b><br>8:4   | <b>turn (2)</b><br>20:25;30:4   | <b>wasteful (1)</b><br>28:12  |
| <b>served (2)</b><br>21:23,24                            | <b>stated (3)</b><br>5:14;11:18;13:3      | <b>tentative (9)</b><br>4:1,9;14:4;17:14;<br>20:16,25;22:6;28:14;<br>29:7 | <b>twelve (1)</b><br>24:11  | <b>watching (1)</b><br>6:4  |
| <b>service (2)</b><br>7:3;12:17                          | <b>statement (1)</b><br>5:2               | <b>term (1)</b><br>28:4   | <b>two (6)</b><br>12:21;18:6;19:3,3;<br>27:21;28:22                                   | <b>Water (5)</b><br>3:15,21;4:3;7:11;9:7  |
| <b>services (4)</b><br>4:2;19:8;20:23;<br>21:12          | <b>stating (1)</b><br>9:10                | <b>terminate (2)</b><br>24:19;25:18                                       | <b>type (2)</b><br>8:8;17:6   | <b>way (19)</b><br>5:1;8:13;13:18;14:3;<br>19:18;21:10,24;23:10;<br>25:4;26:17;27:5,8,12;<br>28:3,6,21,22;29:1;30:1 |
| <b>session (1)</b><br>3:4                                | <b>status (2)</b><br>15:11,12             | <b>terminated (7)</b><br>7:16;8:5;12:24;<br>23:20,21;24:10;26:1           | <b>U</b>  | <b>WEDNESDAY (1)</b><br>3:1   |
| <b>sessions (2)</b><br>6:25;7:4                          | <b>stay (1)</b><br>10:12                  | <b>termination (8)</b><br>7:18;13:3,4;17:10;<br>18:12,14;25:16;26:4       | <b>ultimate (1)</b><br>12:22  | <b>weeks (1)</b><br>4:20  |
| <b>set (4)</b><br>4:18;9:18,25;27:6                      | <b>stick (2)</b><br>28:14;29:8            | <b>terms (5)</b><br>7:16,16;13:8,22;<br>21:24                             | <b>under (10)</b><br>4:6,12;7:2,23;8:9;<br>12:4,5,16;18:1;28:25                       | <b>what's (3)</b><br>3:23;14:7;15:13  |
| <b>setting (1)</b><br>6:2                                | <b>still (3)</b><br>13:11;26:2,4          | <b>that'll (1)</b><br>4:22  | <b>underlying (1)</b><br>22:19  | <b>Whereupon (1)</b><br>30:20   |
| <b>shall (1)</b><br>12:6                                 | <b>story (1)</b><br>22:5                  | <b>theory (1)</b><br>15:21  | <b>Understood (1)</b><br>30:13  | <b>win (1)</b><br>16:23   |
| <b>sharing (1)</b><br>12:19                              | <b>subject (1)</b><br>15:4                | <b>therefore (5)</b><br>9:12;11:5;13:9;22:3;<br>24:1                      | <b>unexpired (1)</b><br>5:19  | <b>withdrawal (1)</b><br>22:4   |
| <b>show (1)</b><br>16:23                                 | <b>submissions (1)</b><br>20:3            | <b>thinking (1)</b>   | <b>unfair (1)</b><br>30:3   |   |
| <b>side (6)</b><br>14:5;16:14;22:17;<br>23:5;27:19,20    | <b>substantive (4)</b><br>10:1;11:2,22,24 |   | <b>unique (1)</b><br>27:15  |   |
| <b>sides (1)</b>   | <b>successful (1)</b><br>7:4              |   |   |   |
|  | <b>sue (1)</b><br>16:3                    |   |   |   |
|  | <b>sufficient (1)</b><br>5:17             |   |   |   |



|  |   |   |  |  |
|--|---|---|--|--|
| <b>within (2)</b><br>6:10,23<br><b>without (3)</b><br>22:20,22;23:21<br><b>wondering (1)</b><br>26:9<br><b>words (2)</b><br>14:18,18<br><b>work (1)</b><br>15:4<br><b>world (1)</b><br>15:4<br><b>worry (1)</b><br>30:10<br><b>write (1)</b><br>26:8<br><b>writing (1)</b><br>18:6   | 24:7<br><b>2018 (1)</b><br>24:3<br><b>2019 (2)</b><br>24:7,15<br><b>2020 (2)</b><br>5:5;6:24<br><b>2022 (4)</b><br>3:1;7:8;10:4;11:21<br><b>20th (1)</b><br>24:15<br><b>21st (1)</b><br>11:25<br><b>23rd (1)</b><br>10:9<br><b>25th (2)</b><br>10:2;12:2<br><b>2nd (1)</b><br>9:5 | <b>8th (1)</b><br>9:23                              |  |  |
|  |   | <b>9</b>  |  |  |
|  |   | <b>9 (1)</b><br>8:10<br><b>9014 (2)</b><br>15:18,24 |  |  |
| <b>1</b>   |   |   |  |  |
| <b>1 (2)</b><br>7:8,14<br><b>10:52 (1)</b><br>30:20<br><b>101 (1)</b><br>24:2<br><b>101,000-dollar (1)</b><br>11:3<br><b>10494 (1)</b><br>10:17<br><b>10th (2)</b><br>10:3,20<br><b>11887 (1)</b><br>7:12<br><b>11896 (1)</b><br>9:8<br><b>11999 (1)</b><br>9:24<br><b>11th (2)</b><br>10:4,20<br><b>12035 (1)</b><br>11:24<br><b>12054 (1)</b><br>12:1<br><b>13 (1)</b><br>3:1<br><b>13.1 (1)</b><br>12:4<br><b>15 (1)</b><br>5:5<br><b>17 (2)</b><br>9:14;11:21<br><b>17th (1)</b><br>10:20<br><b>18 (1)</b><br>9:15 | <b>3</b>  |   |  |  |
|  | <b>3 (4)</b><br>7:19;22:7;29:7,8<br><b>3007b (1)</b><br>8:11<br><b>30th (2)</b><br>12:2,3   |   |  |  |
|  | <b>4</b>  |   |  |  |
|  | <b>4 (1)</b><br>7:21<br><b>4th (2)</b><br>6:24,24   |   |  |  |
|  | <b>5</b>  |   |  |  |
|  | <b>5 (1)</b><br>7:23  |   |  |  |
|  | <b>6</b>  |   |  |  |
|  | <b>6 (1)</b><br>7:25<br><b>67D (1)</b><br>5:22  |   |  |  |
|  | <b>7</b>  |   |  |  |
|  | <b>70011 (1)</b><br>8:10<br><b>7276 (2)</b><br>5:7;6:14<br><b>78104 (1)</b><br>7:11   |   |  |  |
|  | <b>8</b>  |   |  |  |
| <b>2</b>   | <b>8 (1)</b><br>10:4<br><b>8053 (1)</b><br>5:21   |   |  |  |
| <b>2 (1)</b><br>7:16<br><b>20- (1)</b>   |   |   |  |  |